

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) 8:20CR44
) July 21, 2020
Plaintiff,) 10:29 a.m.
) Omaha, Nebraska
VS.)
)
JOSHUA BATES,)
)
Defendant.)

TRANSCRIPT OF GUILTY PLEA PROCEEDINGS`
BEFORE THE HONORABLE MICHAEL D. NELSON
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by digital recording; transcript
produced with computer.

1 (At 10:29 a.m. on July 21, 2020, with counsel for
2 the parties and the defendant present, the following
3 proceedings were had:)

4 THE COURT: We're on the record now in United States
5 of America versus Joshua Bates. It's case number 8:20cr44.

6 Counsel for the government, please enter your
7 appearance.

8 MR. MULLIS: Jody Mullis appearing personally for
9 the government.

10 THE COURT: For the defendant?

11 MR. VELASQUEZ: Good morning, Your Honor, John
12 Velasquez appearing on behalf of the defendant, Joshua Bates,
13 who is present in court.

14 THE COURT: Good morning, Mr. Bates. It's important
15 that you speak clearly and loudly today so that we can make
16 sure that we get your voice recorded.

17 Sir, you have submitted a petition requesting leave
18 to withdraw your previous plea of not guilty and to enter a
19 plea of guilty to Count I of the indictment.

20 Before we can proceed any further I must determine
21 whether you consent to proceed before me as a magistrate
22 judge.

23 You have a right to a change of plea hearing before
24 a district judge. Do you understand that right?

25 THE DEFENDANT: Yes.

1 THE COURT: In the alternative you may consent to
2 proceed before me as a magistrate judge.

3 If you consent to proceed before me, at the end of
4 the hearing I will enter written findings as to what occurred
5 in this hearing.

6 I will either recommend that your plea of guilty be
7 accepted or not accepted. Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you consent to proceed before me as a
10 magistrate judge?

11 THE DEFENDANT: Yes.

12 THE COURT: Is it true that you wish to enter a
13 guilty plea today?

14 THE DEFENDANT: Yes.

15 THE COURT: I'll be asking you some questions about
16 your change of plea and the facts related to that charge.

17 Before I can do that you're going to need to be
18 placed under oath.

19 Would you please stand up and raise your right hand?

20 COURTROOM DEPUTY: Do you solemnly swear or affirm
21 that the testimony you are about to give will be the truth,
22 the whole truth, and nothing but the truth?

23 THE DEFENDANT: Yes.

24 THE COURT: You may be seated. Do you understand
25 that you're now under oath.

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that your answers must
3 be truthful?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that your answers
6 could be used against you if you're later charged with
7 perjury or making a false statement?

8 THE DEFENDANT: Yes.

9 THE COURT: Sir, there are two purposes for this
10 hearing.

11 First we must be sure that you understand the
12 consequences of a guilty plea.

13 That is what may happen to you as a result of you
14 pleading guilty to the charge against you.

15 Second, your guilty plea must be done freely and
16 voluntarily and without any duress or force. Do you
17 understand?

18 THE DEFENDANT: Yes.

19 THE COURT: If you do not understand the questions
20 or words spoken today, please ask either ask me or
21 Mr. Velasquez to explain them.

22 You may consult with him at any time during the
23 hearing.

24 If necessary we will take a break so that you can
25 speak privately with him. Do you understand?

1 THE DEFENDANT: Yes.

2 THE COURT: Sir, what is your full name?

3 THE DEFENDANT: Joshua William Bates.

4 THE COURT: And are you the defendant named in the
5 indictment in this case?

6 THE DEFENDANT: Yes.

7 THE COURT: How old are you?

8 THE DEFENDANT: 38.

9 THE COURT: Where were you born?

10 THE DEFENDANT: Here in Omaha.

11 THE COURT: What is the highest level of education
12 you've achieved?

13 THE DEFENDANT: 12th.

14 THE COURT: Throughout your lifetime you have had
15 mental health counseling and treatment. Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you currently receiving treatment or
18 counseling for your mental health condition?

19 THE DEFENDANT: Sort of. I'm in therapy in Cass
20 County, with the nurses at the Cass County Jail for my
21 anxiety.

22 THE COURT: Are you on medications?

23 THE DEFENDANT: Yes.

24 THE COURT: What medications are you taking?

25 THE DEFENDANT: It's the generic to Zoloft.

1 THE COURT: And are you taking medications in the
2 dosage and frequency you're supposed to?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you believe that you're thinking
5 clearly today?

6 THE DEFENDANT: A little bit.

7 THE COURT: Well, I'm concerned about that. I want
8 -- we need to make sure that you're thinking clearly so that
9 you can make sound decisions today, because you're going to
10 be entering a guilty plea.

11 Do you think that you're prepared and you're able to
12 do that?

13 THE DEFENDANT: Yeah, I think.

14 THE COURT: Are there medications that you're
15 supposed to be taking that you're not taking?

16 THE DEFENDANT: I don't know.

17 THE COURT: Pardon?

18 THE DEFENDANT: I don't know.

19 THE COURT: Are you aware of any medications that
20 have been prescribed to you that you're not taking?

21 THE DEFENDANT: Well, not that have been prescribed
22 to me. I took medicine when I was young, but --

23 THE COURT: You're not under the influence of any
24 alcohol today --

25 THE DEFENDANT: No.

1 THE COURT: -- is that correct?

2 THE DEFENDANT: No.

3 THE COURT: And you're not under the influence of
4 any drugs, other than the medications that have been
5 prescribed to you?

6 THE DEFENDANT: No.

7 THE COURT: Is that true?

8 THE DEFENDANT: I'm not.

9 THE COURT: You're not under the influence of any
10 illegal drugs or alcohol?

11 THE DEFENDANT: No.

12 THE COURT: And you are taking medications that you
13 are supposed to be taking?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, it's important, because this is a
16 very important decision for you today, we need to make sure,
17 and I know that you're upset, and I can see that.

18 That would be a common emotion or stress for someone
19 who is about ready to enter a guilty plea.

20 Before we proceed today I need to be sure that
21 you're thinking clearly and you're prepared to make this
22 decision today.

23 THE DEFENDANT: Yeah, I think I am.

24 THE COURT: Okay. Now, why don't you take a deep
25 breath. We're in no hurry, okay?

1 And, again, if you need to take a break at any time
2 will you let us know?

3 Sir, if you need a break, will you let us know?

4 THE DEFENDANT: Yeah.

5 THE COURT: Are you ready to proceed?

6 MR. VELASQUEZ: You have to answer yes or no.

7 THE DEFENDANT: Yes.

8 THE COURT: Let the record reflect that I've
9 observed the demeanor and conduct of the defendant and I do
10 find him competent to proceed with this hearing.

11 I do note that the defendant is somewhat upset and
12 I'm anticipating that's because he's making an important
13 decision today.

14 Based on the responses to my questions I think that
15 we can proceed and he's competent to proceed with this
16 hearing.

17 If for some reason, Mr. Velasquez, you believe
18 differently, or, Mr. Bates, if you feel like you need to take
19 a break or stop, please let us know. Do you agree to do
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Bates, you received a copy of the
23 indictment, that's the charging document in this case in this
24 case, before?

25 THE DEFENDANT: A what?

1 THE COURT: The charge against you, you received a
2 copy of that?

3 THE DEFENDANT: I didn't get a copy, but I've seen
4 it.

5 THE COURT: It's in front of you there?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you read it and discussed it with
8 your attorney?

9 THE DEFENDANT: Yeah, we went over it.

10 THE COURT: In your petitions to enter a plea of
11 guilty you are asking to plead guilty to Count I in the
12 indictment which charges a violation litigation of Title 18,
13 United States Code, Section 2252(a)(4)(B) and (b)(2). Is it
14 your intention to plead guilty to that charge?

15 THE DEFENDANT: Yes.

16 THE COURT: If there was a trial in this matter the
17 government would be required to prove to a jury each element
18 of that charge beyond a reasonable doubt.

19 The elements are as follows: First, that you
20 knowingly possessed one or more films, videotapes, images,
21 computer disks, or other matter which contained one or more
22 visual depictions of child pornography.

23 Second, that you knew that the visual depiction or
24 depictions were of a minor engaging in sexually explicit
25 conduct.

1 Third, that the visual depiction had been produced
2 using materials that had been mailed, shipped or transported
3 in interstate or foreign commerce by any means, including by
4 computer.

5 And, four, that at least one visual depiction
6 involved a prepubescent minor or minor under the age of 12.

7 Five, that the events occurred here in the District
8 of Nebraska.

9 Mr. Mullis, did I properly set forth the elements of
10 this charge?

11 MR. MULLIS: Yes, Your Honor.

12 THE COURT: Mr. Velasquez, do you agree?

13 MR. VELASQUEZ: Yes, sir.

14 THE COURT: Mr. Bates, do you have any questions
15 about the nature of the charge filed against you or what the
16 government would have to prove in order to convict you of
17 this charge?

18 THE DEFENDANT: No.

19 THE COURT: Have you discussed the facts of this
20 case and any evidence the government has against you with
21 your attorney and offer any defenses that you think you may
22 have with regard to this charge?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you satisfied with the
25 representation that Mr. Velasquez has provided and the advice

1 given to you by him in this case?

2 THE DEFENDANT: Yeah.

3 THE COURT: The laws under which you are charged
4 provide certain penalties that can be imposed. These
5 penalties are as follows:

6 Imprisonment of a maximum of twenty years and a
7 mandatory minimum of ten years.

8 A fine of not more than \$250,000, or both such
9 imprisonment and a fine.

10 A supervised release term of at least five years, up
11 to life, in addition to a term of imprisonment.

12 A special assessment of a hundred dollars and
13 possible ineligibility for certain federal benefits.

14 I also want you to understand, sir, in cases where
15 restitution and forfeiture of property may be authorized or
16 agreed upon, the court may issue payment of restitution or
17 order a forfeiture.

18 Before we go further, I want to know, Mr. Velasquez,
19 in the petition to enter a plea of guilty in the section
20 dealing with penalties --

21 MR. VELASQUEZ: Yes, sir.

22 THE COURT: On question number 15, that should show
23 a mandatory minimum of ten years because of a prior offense
24 in this case. Is that correct, Mr. Mullis?

25 MR. MULLIS: That is correct.

1 THE COURT: So, looking at the defendant's answer to
2 question number fifteen, did he intend to put a minimum of
3 ten years and a maximum of twenty years?

4 MR. VELASQUEZ: Your Honor, I miswrote that. It
5 should be ten years. I think I have zero there, but I
6 initially put ten years. I have to change that.

7 THE COURT: First of all, I'll grant you leave to
8 amend that on the original and hand it back here at the
9 conclusion of today's hearing.

10 I want to make sure that both you and your client
11 initial that change, okay?

12 MR. VELASQUEZ: Right.

13 THE COURT: Now, in addition, Mr. Mullis, do I need
14 to advise the defendant as an element with regard to the
15 prior offense?

16 MR. MULLIS: Your Honor, the element -- it's a
17 sentencing enhancement the court would find, not something
18 the government would have to put forth in front of a jury.

19 So I don't think it's actually an element, but it
20 doesn't do any harm to advise.

21 THE COURT: What we're talking about, Mr. Bates, is
22 that the statutory sentencing range in this case is a
23 mandatory ten years and a maximum of twenty years.

24 Because of the indictment there is an assertion that
25 you've had a previous conviction back in on May 9, 2008, in

1 the District Court of Douglas County, which increases the
2 statutory penalties in this case.

3 So with that said, Mr. Mullis, have I properly set
4 forth the elements in this case?

5 MR. MULLIS: I believe so.

6 THE COURT: Mr. Velasquez, do you agree with that?

7 MR. VELASQUEZ: Yes, sir.

8 THE COURT: And I've properly set forth the proper
9 penalties in this case. Do you agree with that, Mr. Mullis?

10 MR. MULLIS: I believe so.

11 THE COURT: Do you agree with that, Mr. Velasquez?

12 MR. VELASQUEZ: Yes, sir.

13 THE COURT: Mr. Bates, do you have any question
14 about the statutory penalties that you're facing on
15 conviction in this case?

16 THE DEFENDANT: No.

17 THE COURT: The United States Sentencing Commission
18 has issued guidelines that determine recommended sentencing
19 ranges for convicted federal offenders.

20 Have you talked to your attorney about the
21 sentencing guidelines and how they could apply in your case?

22 THE DEFENDANT: Yes.

23 THE COURT: The sentencing guidelines are not
24 mandatory, but they are advisory.

25 In other words, they must be considered, but they do

1 not have to be followed and you may be sentenced outside of
2 that advisory guideline range. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that the advisory
5 sentencing guidelines range --

6 THE DEFENDANT: Yes.

7 THE COURT: One moment, sir. Do you understand the
8 advisory sentencing guideline range may not be determined
9 until after a presentence investigation report has been
10 completed and considered by the court?

11 THE DEFENDANT: Yes.

12 THE COURT: Some state penal systems allow parole,
13 which means release from prison before a person has served
14 all of a sentence imposed.

15 However, you are in a court of the United States,
16 the federal court, and in the federal system parole has been
17 abolished.

18 Do you understand that concerning any sentence to
19 imprisonment under federal law parole does not exist and
20 therefore if you are sentenced to imprisonment you will not
21 be released on parole?

22 THE DEFENDANT: Yes.

23 THE COURT: In addition to any sentence of
24 imprisonment the court must include a term of supervised
25 release to be completed after you have served any sentence of

1 imprisonment.

2 During this term you'll be supervised by a probation
3 officer and you must comply with certain conditions.

4 Sir, do you understand generally what is meant by
5 supervised release?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that if you violate a
8 condition of supervised release your supervised release may
9 be revoked and you may be returned to prison and be required
10 to serve in prison all or part of that term of supervised
11 release without credit for any time you had been on
12 supervision?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you have any questions about
15 supervised release?

16 THE DEFENDANT: No.

17 THE COURT: If your plea of guilty is accepted you
18 will be found guilty of a felony. This can later work to
19 your disadvantage.

20 For instance, if you're later convicted of another
21 crime, your sentence for that crime could be increased simply
22 because of your conviction in this case. Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: In addition, conviction of the offense
25 may deprive you of eligibility for certain federal benefits

1 and valuable civil rights, such as the right to vote, the
2 right to hold public office, the right to serve on a jury,
3 the right to possess any kind of firearm. Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Because this is a Rule 11(c)(1)(C)
6 agreement and you have agreed to a specific sentence or
7 guideline, you will have an opportunity to withdraw your
8 guilty plea and change your plea of guilty to not guilty if
9 the court does not accept the terms of your plea agreement
10 and the stipulated sentence or guideline.

11 Alternatively under that circumstance you could
12 elect to proceed to sentencing if you so choose,
13 understanding that the court will not be bound by the plea
14 agreement. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also agree to waive your right to
17 withdraw your guilty plea under Federal Rule of Criminal
18 Procedural 11(d) before it is accepted for any reason, or no
19 reason, or after it is accepted for a just and fair reason.

20 The one exception is you could withdraw your guilty
21 plea under Federal Rule of Criminal Procedure 11(c)(5) if the
22 court does not accept the terms of your plea agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Regarding your petition to enter a plea
25 of guilty, do you read, write and understand the English

1 language?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you read the petition and
4 voluntarily sign that petition?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you voluntarily answer each question
7 in the petition?

8 THE DEFENDANT: Yes.

9 THE COURT: Under penalty of perjury, do you swear
10 that each of your answers in your petition is truthful?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any questions about anything
13 in your petition?

14 THE DEFENDANT: No.

15 THE COURT: With regard to the plea agreement, did
16 you read and sign the plea agreement and fully discuss it
17 with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: I'm now going to ask Mr. Mullis to
20 summarize the terms of plea agreement. Please listen
21 carefully.

22 MR. MULLIS: Pursuant to the terms of the plea
23 agreement the defendant, Joshua Bates, will plead guilty to
24 Count I of the indictment, a violation of Title 18, United
25 States Code, Section 2252(a)(4)(B) and (b)(2), possession of

1 child pornography.

2 Per this plea agreement, this is under Rule
3 11(c) (1) (C) of the Federal Rules of Criminal Procedure, the
4 defendant shall be sentenced to 120 months imprisonment.

5 Following his term of imprisonment he shall be
6 placed on supervised release for fifteen years.

7 Per the terms of this agreement, Mr. Bates waives
8 any and all rights to appeal or collaterally attack the
9 sentence or conviction in this matter.

10 THE COURT: Mr. Velasquez, are those the terms of
11 the plea agreement between your client and the government as
12 you understand them?

13 MR. VALASQUEZ: Yes, Your Honor.

14 THE COURT: And does the written plea agreement
15 contain all the terms of the entire plea agreement between
16 your client and the government?

17 MR. VALASQUEZ: Yes, sir.

18 THE COURT: Mr. Bates, do you agree those are the
19 terms of the plea agreement that you've made with the
20 government as you understand the terms?

21 THE DEFENDANT: Yes.

22 THE COURT: And does your written plea agreement
23 contain all the terms, conditions and promises of your
24 agreement with the government in this case?

25 THE DEFENDANT: Yes.

1 THE COURT: In your plea agreement you waive or give
2 up your right to appeal your conviction and the sentence
3 imposed upon you except in certain circumstances as set forth
4 in your plea agreement.

5 THE DEFENDANT: Yes.

6 THE COURT: You would otherwise have the right to an
7 appeal. Do you understand you are giving up that right?

8 THE DEFENDANT: Yes.

9 THE COURT: You are also waiving and giving up the
10 right to file any post-conviction proceedings, except in
11 certain circumstances as set forth in your plea agreement.

12 Do you understand that you are also giving up that
13 right?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Velasquez, were there any other
16 offers of a plea agreement made by the government in this
17 case that you did not fully and accurately discuss with your
18 client?

19 MR. VALASQUEZ: No, sir.

20 THE COURT: Mr. Bates, did you have a full
21 opportunity to consider the plea offers made in this case?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you voluntary sign the written plea
24 agreement with the government?

25 THE DEFENDANT: Yes.

1 THE COURT: Other than the agreements that are in
2 the written plea agreement, did anyone make any promises to
3 you or threaten you to get you to sign the plea agreement?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any questions about your
6 plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: You have certain constitutional rights
9 which you give up when you plead guilty.

10 Please listen carefully because I'm going to be
11 asking you whether you understand that you have each of these
12 rights and whether you voluntarily give up these rights.

13 You have the right to plead not guilty to any
14 offense charged against you and to go to trial on the charge
15 filed against tie in this case.

16 You have a right to a speedy and public trial.

17 You have the right to the assistance of an attorney
18 without cost to you if you cannot afford an attorney.

19 You have the right to a trial, to have a jury
20 determine whether the government has proved beyond a
21 reasonable doubt each and every material element of the
22 charged offense.

23 You have the right to see and hear all witnesses and
24 cross-examine any person who is a witness against you.

25 You have the right to decline to testify at your

1 trial so you cannot be compelled to incriminate yourself.

2 You do have the right to testify in your own defense
3 if you so choose.

4 You have the right to subpoena and present witnesses
5 or other evidence to assist you in your trial, and deciding
6 not to testify or put on any evidence cannot be used against
7 you.

8 Do you understand that under the Constitution of the
9 United States you do have and can use all of these rights?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if your plea of
12 guilty is accepted there will not be a trial on the charge
13 filed against you because when you plead guilty you're giving
14 up your right to a trial?

15 THE DEFENDANT: Yes.

16 THE COURT: If your plea of guilty is accepted you
17 give up the right to challenge the way in which the
18 government has obtained its evidence against you.

19 For example, the manner in which you were
20 questioned, or the manner in which you, your home, or your
21 property were searched. Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: To get you to waive these constitutional
24 rights, has anyone connected with law enforcement, or anyone
25 else, threatened you, directly or indirectly, used any force

1 against you, or promised you anything, other than what is
2 contained in your written plea agreement?

3 THE DEFENDANT: No.

4 THE COURT: Have you discussed your constitutional
5 rights with your attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you freely and voluntarily give
8 up these constitutional rights with respect to the charge to
9 which you are pleading guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: No forfeiture in this case?

12 MR. MULLIS: There is no forfeiture, Your Honor;
13 however, under federal statute Mr. Bates may be subject to
14 restitution requested by victims that are identified.

15 THE COURT: I did advise Mr. Bates that there could
16 be an order of restitution in this case. Do you understand
17 that, Mr. Bates?

18 THE DEFENDANT: Yes.

19 THE COURT: After consideration of the responses of
20 the defendant in this case to all questions asked thus far,
21 I now find that he's competent to plead, understands the
22 nature of the charge filed against him and the possible
23 penalties that could be imposed.

24 He understands his rights, willingly, voluntarily,
25 knowingly waives those rights, and further understands the

1 consequences of waiving his rights, including the fact there
2 will be no trial in this case because he is pleading guilty.

3 I therefore accept the defendant's waiver of his
4 rights.

5 Mr. Bates, knowing and understanding everything in
6 your petition to enter a plea of guilty, your written plea
7 agreement, and understanding what we've discussed during this
8 hearing, how do you now plead to the charge set forth in
9 Count I of the indictment in this case?

10 THE DEFENDANT: Guilty.

11 THE COURT: To get you to plead guilty to that
12 charge, has anyone connected with law enforcement, or anyone
13 else, threatened you, directly or indirectly, used any force
14 against, or promised you anything, other than what is
15 contained in your written plea agreement?

16 THE DEFENDANT: No.

17 THE COURT: And are you freely and voluntarily
18 pleading guilty to the charge set forth in Count I of the
19 indictment?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you in fact guilty of that charge?

22 THE DEFENDANT: Yes.

23 THE COURT: Now I'm going to ask Mr. Mullis to tell
24 me generally what facts the government would expect to prove
25 if there were a trial in order to convict you of the charge

1 against you. Please listen carefully. Mr. Mullis?

2 MR. MULLIS: Your Honor, before I get going, the
3 factual basis I'm about to recite is largely reflected in the
4 plea agreement. I'm going to largely recite it.

5 I would note that there's some individuals in the
6 courtroom here, they certainly have a right to be here, but
7 based on the rather explicit nature of what I'm going to say
8 it may make sense if they want to leave for a couple minutes,
9 they could do so.

10 THE COURT: Thank you, Mr. Mullis. Sir, are the two
11 -- I'm sorry, because everybody is masked and I appreciate
12 that, I'm not sure if the two females next to you, are they
13 minors? Are they here for the next case?

14 You are certainly able to be here, but because of
15 the nature of this case it may be helpful if you would step
16 out and I will have the marshals come back and get you when
17 the next case is called.

18 UNIDENTIFIED: Okay.

19 THE COURT: Thank you. Thank you, Mr. Mullis. You
20 may proceed.

21 MR. MULLIS: Your Honor, if there were a trial in
22 this case and the government offered evidence it would offer
23 evidence that on October 11th, 2019, law enforcement officers
24 executed search warrants at the residence of the defendant,
25 Josh Bates. This residence is located in Columbus, Nebraska.

1 Officers located various items, including the
2 defendant's laptop computer, which was located in his
3 bedroom.

4 Officers later forensically examined the laptop
5 computer.

6 237 files containing child pornography was located
7 on the hard drive of the laptop computer.

8 These images involved minors, including prepubescent
9 minors, and minors under the age of 12 years old, I would
10 note the factual basis erroneously omits the age, engaging in
11 sexually explicit activity.

12 One file of child pornography located on the hard
13 drive of the defendant's laptop computer is a nine minute and
14 35 second video involving, among other things, a naked
15 prepubescent male victim performing oral sex on an adult male
16 and the adult male inserting his penis into the anus of the
17 prepubescent male victim and sexually assaulting the
18 prepubescent male victim.

19 The defendant was knowingly in possession of files
20 of child pornography saved on the hard drive of his laptop
21 computer.

22 The hard drive in the defendant's laptop container
23 containing the images of child pornography was manufactured
24 outside Nebraska.

25 The defendant obtained the images of child

1 pornography via the internet.

2 The government would also offer evidence and at its
3 sentencing the government would put evidence in front of the
4 court that prior to October 11th of 2019 the defendant was
5 previously convicted on or about May 9th, 2008, of unlawful
6 possession of intent to distribute child pornography, five
7 counts, and visual depiction of sexually explicit conduct,
8 three counts, in the District Court of Douglas County,
9 Nebraska, case number CR10-9066019, which also is associated
10 with docket number 173-818.

11 THE COURT: Mr. Bates, do you agree to all the facts
12 that are set forth in the plea agreement which you've
13 stipulated to with the government and those facts recited by
14 Mr. Mullis just now during this plea hearing?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you agree that the government would
17 be able to prove all those facts?

18 THE DEFENDANT: Yes.

19 THE COURT: And is that what happened in this case?

20 THE DEFENDANT: Yeah.

21 THE COURT: Yes?

22 THE DEFENDANT: Yes.

23 THE COURT: And are those facts true?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Mullis, do you certify that the

1 defendant's guilty plea is freely, voluntarily, knowingly and
2 intelligently made and that there is a factual basis for his
3 guilty plea?

4 MR. MULLIS: Yes, Your Honor.

5 THE COURT: Are there any questions that you believe
6 should be posed to him?

7 MR. MULLIS: No.

8 THE COURT: Mr. Velasquez, do you certify that your
9 client's guilty plea is freely, voluntarily, knowingly and
10 intelligently made and that there's a factual basis for his
11 guilty plea?

12 MR. VALASQUEZ: Yes, Judge.

13 THE COURT: Are there any questions that you believe
14 should be posed to your client?

15 MR. VALASQUEZ: No, sir.

16 THE COURT: The court now finds the defendant
17 competent and capable to enter an informed plea to the charge
18 against him.

19 He is aware of the nature of that charge and the
20 consequences of his guilty plea.

21 His guilty plea is knowing and voluntary and
22 supported by a factual basis concerning each essential
23 element of the offense charged in Count I of the indictment.

24 The defendant is aware that his answers during these
25 proceedings may be used against him if there's later a charge

1 of perjury or false statement.

2 I will recommend, sir, that your guilty plea be
3 accepted and I will order that a presentence investigation
4 report be prepared.

5 The presentence process may include an interview so
6 that you can provide all information you feel helpful in
7 determining your sentence and appropriate classification,
8 programming and supervision matters.

9 Your level of cooperation is important and should be
10 discussed with your attorney, who is experienced in these
11 matters.

12 Any determination concerning the defendant's plea
13 agreement, that is whether to accept or reject the plea
14 agreement, will be deferred until after the court has
15 reviewed the presentence investigation report and the case
16 proceeds to sentencing.

17 I will enter an order on sentencing schedule. At
18 the conclusion of today's hearing it be available on CM-ECF.

19 I will tell you that the sentencing here will be
20 scheduled before District Judge Buescher on October 14th,
21 2020, at ten o'clock in the morning.

22 The defendant has been in custody pending
23 proceedings in this.

24 He'll remain in custody and will be remanded to the
25 custody of the United States Marshal pending sentencing and

1 further order of the court.

2 Are there any further matters that can be addressed
3 on behalf of the government?

4 MR. MULLIS: No, Your Honor.

5 THE COURT: On behalf of the defendant?

6 MR. VALASQUEZ: No, Your Honor. Thank you.

7 THE COURT: You're welcome. Good luck, Mr. Bates.

8 We are adjourned. The defendant is remanded. We're in
9 recess. The parties are excused.

10 (11:00 a.m. - Adjournment)

11 C-E-R-T-I-F-I-C-A-T-E

12 I, Allan G. Kuhlman, do hereby certify that the
13 foregoing transcript is a true and accurate transcription, to
14 the best of my ability, from the digital recording of the
15 proceedings held in this matter.

16 Dated August 5, 2020.

17

18 s/Allan G. Kuhlman
19 Allan G. Kuhlman

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